



same as its own findings of fact as if specifically set forth herein. However, the Appeals Board would elaborate on the findings of the Administrative Law Judge with regard to the evidence concerning the claimant's loss of ability to earn a comparable wage in the open labor market.

The last sentence of Finding No. 10 by the Administrative Law Judge points out that the opinion of Mr. Jerry Hardin was to the effect that claimant had suffered a thirty-three percent (33%) wage loss. It is correct that Mr. Hardin testified that in his opinion, based upon the restrictions of both Dr. Morris and Dr. Melhorn, that claimant had suffered a thirty-three percent (33%) wage loss. Using the restrictions recommended by Dr. Hollis, he found a forty-four percent (44%) wage loss. However, Mr. Hardin made his calculations concerning wage loss based upon what he understood claimant's pre-accident average weekly wage to be, \$360.00 per week. In fact, all of the parties stipulated to an average weekly wage of \$427.45. Applying the stipulated average weekly wage to the opinion by Mr. Hardin that claimant was capable of earning \$240.00 a week post-injury, based upon the restrictions recommended by Dr. Morris and Dr. Melhorn, results in a loss of ability to earn a comparable wage of forty-four percent (44%). Applying Mr. Hardin's opinion of a post-injury ability to earn only \$200.00 per week, assuming the restrictions recommended by Dr. Hollis to be appropriate, would result in a fifty-three percent (53%) wage loss.

The Appeals Board agrees with the finding by the Administrative Law Judge that claimant has proven a work disability and pursuant to Hughes v. Inland Container Corp., 247 Kan. 407, 799 P.2d 1011 (1990) permanent partial general disability should be determined by the extent (percentage) of reduction of the employee's ability to perform work in the open labor market and the employee's ability to earn a comparable wage. Both prongs of this two-part test must be considered in light of the employee's education, training, experience and capacity for rehabilitation. K.S.A. 1990 Supp. 44-510e(a). We likewise agree with the Administrative Law Judge that the facts of this case do not suggest that either element should be given greater weight. Therefore, in calculating permanent partial general disability, equal weight should be given to the two elements by averaging the two in arriving at a percentage of work disability. Schad v. Hearthstone Nursing Center, 16 Kan. App. 2d 50, 816 P.2d 409, rev. denied 250 Kan. 806 (1991).

The Appeals Board adopts the legal authorities and conclusions of law of the Administrative Law Judge as set forth in the Award. Giving equal weight to the opinions of the three medical experts by averaging Mr. Hardin's uncontroverted opinion on labor market loss, results in a finding of a forty-one percent (41%) labor market loss. Again, utilizing the uncontroverted testimony of Mr. Hardin as to claimant's post-accident ability to earn a comparable wage in the open labor market, correcting those percentage loss numbers to conform to the stipulated average weekly wage, results in a finding of a forty-seven percent (47%) wage loss. In applying the Hughes rationale to these components, as did the Administrative Law Judge, giving equal weight to the labor market and wage components, we find the claimant to have sustained a forty-four percent (44%) work disability.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Shannon S. Krysl, dated January 20, 1994, should be, and hereby is, modified as follows:

**AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR** of the claimant, Kenneth W. Lacey, and against the respondent, Farmland Foods, Inc., and its insurance carrier, Aetna Casualty & Surety Co., for a series of accidental injuries which culminated on July 3, 1992 and based upon an average weekly wage of \$427.45, for 14 weeks of temporary total disability compensation at the rate of \$284.98 per week or \$3,989.72, followed by 401 weeks at the rate of \$125.39 per week or \$50,281.39 for a forty-four (44%) permanent partial general body impairment of function, making a total award of \$54,271.11

As of February 10, 1995, there is due and owing claimant 14 weeks of temporary total disability compensation at the rate of \$284.98 per week or \$3,989.72, followed by 122.14 weeks of permanent partial disability compensation at the rate of \$125.39 per week in the sum of \$15,315.13, for a total of \$19,304.85 which is ordered paid in one lump sum less any amounts previously paid. The remaining balance of \$34,966.26 is to be paid for 278.86 weeks at the rate of \$125.39 per week, until fully paid or further order of the Director.

The claimant is entitled to unauthorized medical up to the statutory maximum.

Future medical benefits will be awarded only upon proper application to and approval by the Director of the Division of Workers Compensation.

The claimant's attorney fees are approved subject to the provisions of K.S.A. 44-536.

Fees necessary to defray the expenses of administration of the Workers Compensation Act are hereby assessed against the respondent to be paid direct as follows:

Barber & Associates	
Deposition of J. Mark Melhorn, M.D.	\$173.90
Deposition of Kenneth Lacey	\$445.40
Deposition of Kenneth W. Hollis, M.D.	\$224.80
Deposition of Jerry D. Hardin	\$233.40
Ireland Court Reporting	
Transcript of preliminary hearing	\$ 71.97
Deposition of Harry A. Morris, M.D.	\$166.10
Deposition Services	\$ 68.30
Transcript of regular hearing.	

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February, 1995.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Bruce L. Stewart, Wichita, KS  
Edward D. Heath, Wichita, KS  
Shannon S. Krysl, Administrative Law Judge  
George Gomez, Director